IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1918 OF 2007

Godabai w/o Ishwara Mali & Anr..... ....Petitioners
V/s
Mahaninga Bajiraya Mali & Anr..... ....Respondents.

Mr.T.S.Ingle, Adv. For the petitioners.

Mr.S.G.Deshmukh, Adv. For respondent No.1.

CORAM: A.P.DESHPANDE, J.
4/9/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of both the parties.

The plaintiff instituted a suit for possession of the suit land. The suit was dismissed by the trial Court vide its judgment and decree dated 22.4.96. Aggrieved by dismissal of the suit the original plaintiffs filed regular civil appeal bearing No.289/96 before the district Court. Pending the appeal in the district court the plaintiff No.1 Godabai expired on 22.7.02 and hence plaintiff No.2-Ramawwa wife of Sambhaji moved an application for bringing legal representatives of appellant No.1 on record. The present petitioner by name Ramesh filed an application to bring his name on record as legal representative of the deceased-plaintiff No.1. The applicant Ramesh claims to be the adopted son of the deceased. With a view to substantiate his application for bringing his name on record as legal representative of the deceased the applicant/petitioner filed on record of the appellate Court certified copy of deed of adoption. The appellate court referred the question of legal representative to the trial Court for making an inquiry under Order XXII

rule 5 of Code of Civil Procedure. The exercise done by the appellant court is under proviso to rule 5 of order XXII. Before the trial Court the present petitioner filed yet another application making same prayer which he had made in appellate court i.e. to bring on record the name of the petitioner as legal representative of the deceased. It is obvious that there was no need to make such an application. However the trial Court by passing an order rejected the prayer made in the application for the reason that the very filing of the application was misconceived.

2. The petitioner had also moved an application seeking permission to lead secondary evidence at Ex.92. The petitioner has submitted in the application that original deed of adoption is misplaced and thus wanted to prove the same by placing on record certified copy of registered adoption deed. The trial Court had rejected the said application by an order dated 4.1.2007 which order has been challenged by filing present writ petition. The impugned order of rejecting the application is by observing that the petitioner has not pleaded that the original was in his possession and though efforts are made to search the said document the same is not traceable. The trial Court has adopted a very pedantic approach. The adoption deed is a registered document and the petitioner wanted to place on record certified copy of the registered adoption deed. It is also pleaded that the original is misplaced and hence cannot be placed on record. I do not see any reason to reject the application moved by the petitioner seeking permission to lead secondary evidence with a view to prove the adoption deed. Bringing of legal representatives on record under Order XXI rule 5 is only for the purpose of representing the estate of the deceased. Learned counsel for respondent submits that he has no objection if the petitioner is permitted to lead secondary evidence in the nature of certified copy of the registered adoption deed. In the interest of justice impugned order is

quashed and set aside as the same suffers from patent illegality. Writ petition is allowed. Impugned order dated 4.1.07 below Ex.92 is quashed and set aside. Petitioner's application at Ex.92 is allowed. Rule made absolute in above terms.

4.9.07